

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1395

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

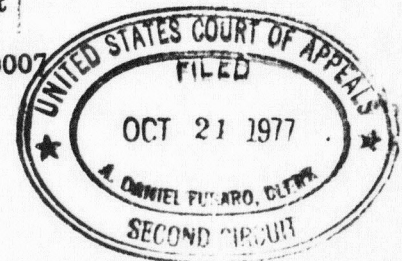
VINCENT ANGELINA,

Appellant.

*On Appeal From The United States District Court
For The Southern District Of New York*

APPELLANT'S APPENDIX

MEL A. SACHS
Attorney for Appellant
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DOCKET ENTRIES (Pages A1 to A5)

U.S. DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK CLERK OF COURT 100 WALL STREET NEW YORK, N.Y. 10038	0208-1 0856 (Ship Sentence) District Office	ANGELINA, VINCENT JOHN (Last First Middle)	01 20 77 0040 01 *01	76-1363
U.S. TITLE SECTION 21:812,841(a)(1) & 841(b)(1)(B) 21:846 21:812,841(a)(1) & 841(b)(1)(B)		OFFENSES CHARGED Distr. & possess. of Lysergic Acid Diethylamide, I. 1-2 Cons. to violate Federal Narcotics Laws Distr. & Possess. of phenidmetrazine and phentermine hydrochloride, I & IV. 2 & 3		
8/9				
II. KEY DATES & INTERVALS				
ARREST or U.S. Custody Reg'n 11/23/76 Summons Served First Appearance	INDICTMENT Information 1-20-77 Indict Waived Superseding Indict Info 4-5-77	ARRAIGNMENT 1-27-77 1-27-77 6-6-77	TRIAL Ver Dict 4-6-77 Trial Date Trial Ended	SENTENCE 6-6-77 7-22-77 X Convicted X On Parole X Other
MAGISTRATE				
Search Warrant Issued Summons Issued Arrest Warrant Issued COMPLAINT OFFENSE (in Complaint)	DATE 11/24/76 11/24/76 11/24/76 11/24/76	INITIAL/NO. LB-08AH LB-08AH LB-08AH 21 USC 812,841(a)(1) and 841(b)(1)(A) - NARCOTICS	INITIAL APPEARANCE DATE 11/24/76 PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled 12/6/76 Date Held WAIVED NOT WAIVED INTERVENING INDICTMENT	OUTCOME DISMISSED HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
U.S. Attorney or Asst. Gregory L. Distant 270 791-1930		ATTORNEYS Defense CJA Ret Waived Self None / Other PD CD Enid R. Gerling 277 Broadway, N. Y. C. WO 6-2145		

JUDGE GRIESA

E.F.

ON
JS-3
OFF

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
11/24/76		Complaint filed, represented by Enid R. Gerling, 277 Broadway, N.Y. Defendant released on his own recognizance.	(a) (b) (c) (d)
1/20/77		Indictment filed, 77 Cr. 40.....Bryan, J.	
1-27-77		Deft. (atty. Enid K. Gerling present) pleads not guilty. Deft. continued R.O.R. Case assigned to Griesa, J. for all purposes.....Pierce, J.	
1-28-77		Filed notice of appearance by E.R. Gerling 277 B Way NYC	
2-18-77		Trial date Apr. 6 10AM. GRIESA, J	
4-5-77		Filed Superseding Indictment & referred to Griesa, J.Lasker, J.	
4-6-77		Deft. & atty. present..Pleads not guilty to S77Cr.40..motion to adjd granted P.T.C. 4-29-77 Bail R.O.R. Cont d..Griesa, J.	
4-19-77		Filed Governments Notice of Readiness for trial.	
4-29-77		Filed affdvt. of A.R. Bentley, AUSA in response to defts motion for relief of various kinds....	

— OVER —

A

DOCUMENT NO.

Filed Govt. requests to charge.....

PTC HELD Trial date June 6, 1977 10AM. GRIESA, J

Deft (Atty present) Withdraws plea of N/G and Pleads Guilty to COUNT 3 ONLY. Sentence ADJ to July 15, 1977 9:30 AM. PSI Ordered. BAIL CONTINUED. GRIESA, J

7-77 Filed Govt's affidavit in opposition to motion of deft for an order vacating his guilty plea entered on 6-6-77. by Sarah Schrank Gold, AUSA.

7-15-77 DEFT (Atty. present) Application to withdraw Guilty Plea Denied. Sentence date July 22, 1977 9:30AM BAIL CONTINUED. GRIESA, J

7-22-77 Filed Judgment (Atty. Enid Gerling, present) The defendant is committed for imprisonment for a period of ONE (1) YEAR on Count 3 to be followed by TWO (2) YEARS Special Parole. Upon the defendant's motion Counts 1 & 2 are dismissed with the consent of the Government. The defendant is to surrender on August 12, 1977 at 10:30 A.M. in Room 506 (Part I). The defendant is continued Released on his own Recognizance until the date of surrender. GRIESA, J

Entered on - 7-26-77.

Issued Commitment and Copies.

7-22-77 Orig. indictment 77 CR 40 is nolleed orally in open court on govt's application. GRIESA, J

7-28-77 Filed deft's notice of motion for an order to modify judgment.

8-1-77 Filed memo endorsed on motion filed 7-28-77..... Application denied. So Ordered. GRIESA, J m-n notified US Atty.

8-8-77 Filed memo endorsed on motion to set aside the conviction.... MOTION DENIED.. So Ordered.... Griesa, J..... m/n

8-9-77 Filed NOTICE OF APPEAL of Defendant to USCA 2nd Circuit from judgment filed 7-22-77. Copy mailed to Attorney for Deft. Mel A. Sachs, 100 Church Street, New York, NY 10007 and copy to U.S. Attorney.

CR 40 for 5/10/77

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY

RAYMOND E. BURGHARD

Deputy Clerk

A2

BEST COPY AVAILABLE

DOCKET NO. 77-139

☐ Bank ☒ Criminal	☐ Private Civil ☐ Prisoner	☐ Administrative ☐ Conn. ☐ EDNY ☐ WDNY ☐ NDNY ☒ SDNY ☐ VT ☐ Other (specify) _____	MR. NUMBER T-77
DOCKET FEE		DISTRICT COURT DATA:	
DISTRICT DOCKET NO.		☐ CROSS APPEAL OR ☐ CONSOLIDATED WITH DOCKET NOS:	
77 Cr. 40		DATE ACTION FILED IN DIST. COURT	
1-20-77		DATE OF DISTRICT COURT JUDGMENT	
7-22-77		RECORD FILED (ORIGINAL DIST. COURT PAPERS)	
9-27-77		(TRANSFERRED)	
8-9-77		DATE DOCKETED	
9-27-77		DATE OF DOCKETED	

[illegible]

MOTIONS TO EXTEND TIME		CALENDAR	TERMINATION	METHOD OF DISPOSITION	
Date Filed	Order Entered	Date Time Request Sent 9-20-77	Date Heard/Submitted Tape No.	☐ WRITTEN DISPOSITION ☐ WRITTEN OPINION ☐ DECISION FROM SUMMARY ☐ SUMMARY ORDER ☐ COURT ORDER ☐ DEFAULT JUDGMENT ☐ CAMP, CASE, ETC. ☐ CONSENT ☐ RULE 33, CERTIORARI ☐ 0.18(7) 918-1-1-1 ☐ OTHER (SPECIFY)	
		Date Disqualification Sent	Date Judgment Filed/ Order of Disposition		
		Date Certain Notices Sent (No. sent _____) 1 2 3 4 5 6 _____	Date Bill of Costs Filed		
		Receipt of Day ☐ Certain Notices ☐ 1 2 3 4 5 6 _____	Date Statement of Costs Filed		
		Date Set for Argument	Petition for Rehearing Filed ☐ Date ☐		
		Committed ☐ Not Committed ☐ ROR ☐ Bail ☐	Granted ☐ Denied ☐ Date ☐		
			☐ Additional Petitions for Rehearing-See Docket Entries		
Proceedings Held in Abeyance ☐	Reactivated ☐		Petition for Certiorari Filed ☐ Date ☐		Record Returned
Issuance of Mandate Stayed ☐	Stay Vacated ☐		☐ Additional Petitions for Certiorari-See Docket Entries		Receipt of Return of Records
					Date Reopened

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

T-7795

FILINGS - PROCEEDINGS

DATE

9-7-77 Filed copies of docket entries, notice of appeal and form B
10-1-77 Court reporter filed Form B
10-1-77 Received record (original papers of district court)
10-1-77 Filed scheduling Order #1
10-1-77 Received docket fee
10-1-77 Filed record (original papers of district court)
10-1-77 Received stipulation substituting Mel A. Sachs, Esq. as counsel
for appellant in place of Enid K. Garling, Esq.
10-1-77 Filed motion for a stay with proof of service

USCA
DOCKET SHEET (8-78)

7-1395

T.P. Griesa

TITLE OF CASE

ATTORNEYS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

United States Attorney
One St. Andrews Plaza
New York, N.Y. 10007

ANGELINA,

Defendant-Appellant.

Mel A. Sachs, Esq.
100 Church St. -18th Fl.
New York, N.Y. 10007
(962-4545)

BEST COPY AVAILABLE

DOCKET SHEET (A-3)

INDICTMENT (Pages A6 to A8)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

-v-

VINCENT ANGELINA, a/k/a
"Algene."

S 77 Cr. 40 (TPG)

Defendant.

----- X

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of September, 1976, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, VINCENT ANGELINA, a/k/a "Algene," the defendant, Kenneth Meyerson, named herein as a co-conspirator but not as a defendant, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly did combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, namely, violations of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

2. It was a part of said conspiracy that the defendant unlawfully, intentionally and knowingly would and did distribute and possess with intent to distribute Schedule I, III and IV controlled substances. the exact amounts thereof being to

the Grand Jury unknown, in violation of Sections 812, 841(a)(1) and 841(b)(1)(B) of Title 21, United States Code.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. On November 17, 1976, in a telephone conversation, the defendant VINCENT ANGELINA, a/k/a "Algene," offered to sell approximately 100 tablets of LSD.

2. On November 17, 1976, at 2026 Ocean Avenue, Brooklyn, New York, the defendant VINCENT ANGELINA, a/k/a "Algene," sold 98 LSD tablets, 491 Statobex capsules, 489 Lotosate tablets, 100 Doriden tablets and 100 Fastin capsules for \$1375.

3. On November 23, 1976, at Sheridan Square and Seventh Avenue, New York, New York, the defendant VINCENT ANGELINA, a/k/a "Algene," bought approximately 1600 tablets of LSD from co-conspirator Kenneth Meyerson.

4. On November 23, 1976, at Everhard's Bathhouse, 28 West 28th Street, New York, New York, the defendant VINCENT ANGELINA, a/k/a "Algene," handed approximately 1596 LSD tablets to another person.

(Title 21, United States Code, Section 846).

COUNT TWO

The Grand Jury further charges:

On or about the 17th day of November, 1976 in the

Eastern District of New York, VINCENT ANGELINA, a/k/a "Algene," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 3 purple tablets containing lysergic acid diethylamide (LSD) and approximately 95 pink tablets containing lysergic acid diethylamide (LSD), three Schedule III controlled substances, to wit, approximately 491 capsules containing phendimetrazine, approximately 489 tablets containing talbutal, a derivative of barbituric acid, and approximately 100 tablets containing glutethimide, and a Schedule IV controlled substance, to wit, approximately 100 capsules containing phentermine hydrochloride.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

COUNT THREE

The Grand Jury further charges:

On or about the 23rd day of November, 1976, in the Southern District of New York, VINCENT ANGELINA, a/k/a "Algene," the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule I controlled substance, to wit, approximately 1596 tablets containing lysergic acid diethylamide (LSD).

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(B).)

s/Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

s/Leo Agostini
FOREMAN

TRANSCRIPT OF HEARING (Pages A9 to A19)

pgs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA :
:
vs. : 77 Cr. 40
:
VINCENT JOHN ANGELINA, :
:
Defendant. :
:
-----X

Before:

HON. THOMAS P. GRIESA, District Judge.

New York, June 6, 1977;
11.10 o'clock a.m.

APPEARANCES:

ROBERT B. FISKE, JR., Esq.,
United States Attorney for the
Southern District of New York:
BY: Sarah Gold, Esq.,
Assistant United States Attorney.

ENID K. GIRLING, Esq.,
Attorney for Defendant.

THE COURT: Do we have an application?

MISS GIRLING: The defendant wishes to withdraw his plea of not guilty and enter a plea under the third count of the indictment to cover the indictment. That is, your Honor, the sale of the LSD.

THE COURT: What does the Government say to the plea on the third count?

MISS GOLD: We told the defendant, your Honor, at the time of sentencing we would not oppose a motion to dismiss Counts 1 and 2.

THE COURT: We have the jury panel out in the courtroom. I would like to take the plea in the robing room, if that's acceptable.

Does the Government have any objection?

MISS GOLD: No, your Honor.

MISS GIRLING: The defendant has no objection.

THE COURT: Have you gone over with Mr. Angelina the type of questions I am going to ask him?

MISS GIRLING: I told if it was because of his own free will and if he sold that such-and-such a date --
BY THE COURT:

Q How old are you?

A 49.

Q Do you fully understand what I am saying to

A10

1 pgs

2 you now and what you are saying to me?

3 A Yes, sir.

4 Q You are not under the influence of any
5 narcotics or any alcoholic influence or anything like
6 that?

7 A No, sir.

8 Q Are you acting today of your own free will?

9 A Yes, sir, I am.

10 Q Have you gone over this matter with your
11 lawyer who is with you today?

12 A We have spoken of it.

13 Q Are you satisfied with her advice and her
14 representation?

15 A Yes, sir.

16 Q I am sure she has described to you and you have
17 read the counts in the indictment, but I am required to
18 summarize as to Count 3, and Count 3 charges that on or
19 about November 23, 1976 you unlawfully and knowingly
20 distributed and possessed within intent to distribute
21 approximately 1596 tablets of LSD.

22 Are you aware that that is the charge in
23 Count 3?

24 A Yes, sir.

25 Q Are there any agreements between you and the

All

1 pgs

2 Government?

3 A No, sir.

4 Q Except that the Government will not oppose
5 dropping Counts 1 2 at the time of sentence. Do you
6 understand that?

7 A Yes.

8 Q There are not other agreements?

9 A No.

10 THE COURT: Is that correct?

11 MISS GIRLING: Yes.

12 Q I want to ask some questions to make sure you
13 understand the rights you are giving up by pleading guilty.

14 You understand that by pleading guilty to
15 Count 3 you are giving up the right to a jury trial?

16 A Yes, sir.

17 Q There will be no trial at all of the charges
18 in Count 3; do you understand that?

19 A Yes.

20 Q Do you understand that by giving up this right
21 to a jury trial you are giving up the right to have your
22 attorney cross-examine all of the Government witnesses,
23 and you are giving up the right to insist that the Govern-
24 ment prove its case beyond a reasonable doubt, and you are
25 giving up the right to have witnesses subpoenaed in your

A12

1
2 favor? Do you understand all that?

3 A Yes.

4 Q Do you understand that at a trial of this case,
5 if the case went to trial, you would not be required to,
6 testify or speak in any way because of your privilege
7 against self-incrimination? Do you understand that?

8 A Now, I do.

9 Q Have any threats been exercised, or has any
10 coercion been exercised, to get you to plead guilty?

11 A No, sir.

12 Q Do you understand that if you plead guilty I
13 have a right to interrogate you about the circumstances
14 of Count 3 and you are required to answer truthfully, and
15 if you don't that would be perjury?

16 A Yes.

17 Q Do you understand that the maximum penalty
18 under Count 3 is five years in prison, \$5000 fine, plus
19 two years special parole following any period of
20 incarceration? Do you understand that that is the
21 maximum penalty provided by the statute?

22 A I was not informed of the fine or the period
23 of parole.

24 MISS GIRLING: I didn't inform him of the
25 two years of parole.

A13

1 Q I inform you now. The maximum penalty is
2
3 five years in prison and --

4 A And/or --

5 Q I am talking about the maximum. Congress has
6 provided that the maximum that can be received for this
7 offense is five years in prison and \$5000 fine; and in
8 the event of any incarceration, two years special parole
9 after that.

10 A After the incarceration.

11 Q A special parole means that Congress has simply
12 provided that if there is any incarceration there will be
13 at least two years of parole after that.

14 Do you understand that?

15 A I understand that.

16 Q Do you understand that the exact sentence
17 within those limits is up to me to decide as the Court, and
18 I make no commitment or promise to you about what that
19 exact sentence will be. I only decide that after I
20 received a full report, what we call a pre-sentence report,
21 about your background and so forth, and after I receive
22 that and I hear your statement and your attorney's state-
23 ment, only after that do I decided upon the sentence.
24 Do you understand that?

25 A Yes, sir.

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Q Would you state, in your own words, what you did to commit the offense in Count 3?

A Repeat that question, please.

Q Tell me, in your own words, what you did to commit the offense?

A I would purchase the drug.

Q The LSD?

A Right, and handed it to the informant in the case.

Q To sell it to him?

A No. I gave it to him.

Q You were going to give it to him?

A I did.

Q You did give it to him?

A Yes.

Q What was the purpose of giving it to him, in your mind? You didn't know he was an informant?

A Not at the time, no.

Q What was your purpose in giving it to him?

A He was in dire need of money, as he explained to me, and he said if I want to purchase these things for him, and I put up the cash, that it could allow him to turn over the sale of the pills and pay me back my cash, and he could have the money so desperately.

A15

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Q This is about November 23rd, 19 --

A Just prior to Thanksgiving.

Q Where did that take place?

A Where I purchased?

Q Was it New York City?

A Yes.

THE COURT: Are there any other questions you feel should be asked?

MISS GOLD: Well, perhaps, Judge, you might ask him if he was not expecting to receive money from the informant for these drugs at that time, \$2400 to be precise.

BY THE COURT:

Q Were you expecting ultimately to receive money from him?

A The money I had put out in purchasing the drug.

Q How much was that?

A I had put out \$1700.

Q How much did you expect to receive back?

A \$1700.

THE COURT: That seems to me enough to constitute the offense.

Q After our discussion do you still wish to plead guilty to Count 3?

A16

1 THE COURT: Do you see any reason that that
2 plea should not be accepted?

3 MISS GURLING: No, your Honor. I had dis-
4 cussed this with him two hours on Thursday, and on Friday
5 morning we discussed it again. Then the United States
6 Attorney spoke to him for a few minutes in my presence,
7 not to convince him, but to say what she offered him, and
8 he told me -- he said: I am ready, willing, and able to
9 go to trial. My witness is ready.

10 THE COURT: Under the circumstances, is there
11 any reason why in your view he should not plead guilty?

12 MISS GIRLING: There is no reason why he should
13 not plead guilty in my view. There was a reason for it,
14 but he did transfer the drugs.

15 THE COURT: I find that the plea is voluntarily
16 made and I accept the plea. I find the defendant guilty
17 of Count 3.

18 We will set the sentence date for July 15th
19 in this room, and that will be at 9.30 in the morning.

20 Please make note of that, all of you.

21 THE DEFENDANT: May I please ask that any
22 amount of time you give me above and beyond that to sort
23 of get my business together -- I do run two businesses,
24 and it is going to take a lot of time in the event that I
25

pgs

should possibly get time and have to go to jail. I would have to have the business situation --

THE COURT: The best thing to do is to have the sentence. If you get any prison term then we can work out the surrender date. I think you ought to know where you stand. That's almost a month and a half off -- a month and a week.

I think we should go forward on July 15th, 9.30 in the morning.

See that he sees the Probation Office.

Give them all your cooperation.

MISS GIRLING: I will file papers before that date.

THE COURT: In advance of the sentence date you should come to my office and look at the pre-sentence report so you are informed as to what it says.

MISS GIRLING: I have your permission to file papers and give you the original?

THE COURT: File things through the Probation Office. That's the best way. Talk to the Probation Office.

MISS GIRLING: I have certain items. I know certain facts about this case that the Probation Officer doesn't know.

A18

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THE COURT: You work it out with the office.
Things will come to me through them. You take him down
there and make the necessary arrangements.

(Time noted: 11.25 a.m.)

A19

MOTION TO SET ASIDE THE CONVICTION (Pages A20 to A21)

----- X

UNITED STATES OF AMERICA

v.

VINCENT ANGELINA

----- X

VINCENT ANGELINA, being duly sworn deposes and says:

That previous to sentence his attorney made a motion to set aside his plea of guilty on grounds of law.

That he is now making a motion to set aside the plea of guilty and the sentence on the additional grounds.

1. That the United States Attorney assured him that if he took a plea she would do nothing to influence the court of his sentence. Contrary to her word she gave certain facts to the probation officer which were detrimental to his report and definitely must have had an influence on the court.

2. The probation officer included in his report factors about the case which were a question of fact and should not have been placed before the court in a determination of sentence. These facts had no substantial proof and were based on hearsay and the opinion of the United States attorney and the probation officer.

3. The probation officer misrepresented the defendant's attitude and cooperation with him in that he asked for only certain information and then claimed the defendant did not cooperate... E.G. financial statement.

4. The defendant feels that the probation officer was definitely prejudiced and did not do a sufficient investigation as to his work and background.

5. That the judge stated in his sentencing that the defendant claimed that the crime was committed under influence that is not a mitigation or defense ... this is definitely contrary to law.

6. That although the defendant was made no direct promise he was led to believe by the United States attorney and the court that by taking the plea he would get a minimum sentence to allow him to go along with his life.

7. That the sentence is excessive and deterrent is to rehabilitate a defendant. This sentence will completely destroy the defendants, life, livelihood and business, which he has built up over the years and will leave him unable to carry on in the community when he is released.

8. That the court made statements that he is sentencing this defendant to set an example to the community so that they cannot get away with this type of crime ... this in and of itself is not a reason or cause to unjustly incarcerate this defendant.

9. The defendant feels in view of the duress used in making him take the plea, the untruthful statements made by the United States attorney, and the courts attitude on sentence that he has a right to again request that this sentence be set aside, and his plea of guilty be set aside so that he may have his day in court to prove the facts he claims in the legal defense of entrapment.

RESPECTFULLY SUBMITTED,

Sworn to

July, 1977

A21

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA, :
5 -against- : S-77 Cr. 40
6 VINCENT ANGELINA, :
7 Defendant. :
8 -----x

9
10 New York, New York
11 July 22, 1977 - 9:50 a.m.

12
13 BEFORE: HON. THOMAS P. GRIESA,
14 District Judge

15 APPEARANCES:

16
17 ROBERT B. FISKE, JR., ESQ.,
18 United States Attorney for the
19 Southern District of New York
20 BY: JANE PARVER, ESQ.,
21 Assistant United States Attorney

22
23 ENID GERLING, ESQ.,
24 Attorney for the Defendant
25

(Case called.)

MS. PARVER: The government is ready, your Honor.

MS. GERLING: Defendant ready.

THE COURT: Does the government have any statement

MS. PARVER: No, your Honor.

THE COURT: Ms. Gerling?

MS. GERLING: Yes, Judge.

As per your instructions, I read the probation report this morning. I am not going to be lengthy because you have letters showing the defendant's character.

One thing I will say is that Ms. Gold -- in the probation report, there is a statement by Ms. Gold saying that she could prove that Mr. Angelina has been trafficking in drugs for ten years. This is an unsubstantiated statement, Judge, and Mr. Angelina denies this allegation.

He has not been trafficking in drugs, he has been working as a beauty parlor operator plus his own business. I believe that Ms. Gold made this statement and if it is in the probation report, she should be able to substantiate it. If that's her defense, that's one thing. But I don't believe that any weight should be given to it.

THE COURT: It will not.

The thing is that he has pleaded to a particular

ewlt

crime and that's the crime I am considering. The circumstances of that crime are very important for me to consider to see whether this is a single situation or whether it is as in some other character. I will say on both sides that I cannot consider for sentencing evidence that I don't have. I will just not consider tapes that I haven't heard and so forth.

MS. GERLING: Another statement, he said that the defendant shows no remorse. Why he put that in, I don't know. Mr. Angelina not only shows remorse, he is in trepidation of this charge and sentence and everything else and the only thing that has kept him sane is his work, Judge.

He made a difference, that he said he made no profits from his statement and he said he took no money when he spoke to Mr. Weber. Now, I was present when Mr. Weber questioned him. The defendant meant in the way he answered Mr. Weber, that he got his money back on the first one but the profit went to the other gentleman, the young man who was the informer.

I will be very short, Judge.

He also says that he knows that in the previous brushes with the law, the last one was about twenty years ago, that he was the person -- it was always the fault of his lover, and he questions that. He contradicts himself because Mr. Angelina, he does say, is a passive person. He

1 ewlt

4

2 is always in a passive relationship with any lover that he
3 has.

4 Also, he said about the cash flow, Judge, that
5 he only got one month. Mr. Angelina informed me that is all
6 he was asked for, that one-month cash flow when he was
7 visiting.

8 THE COURT: I have considered your letter carefully
9 Mr. Angelina. Do you have any statement?

10 THE DEFENDANT: No, your Honor, except as you
11 stated you have considered my letter and I hope that you take
12 everything into account that I have stated in the letter is
13 true.

14 THE COURT: This is a difficult case. You have
15 a criminal record in the past, but there is no record, really
16 for a number of years. There are arrests and convictions from
17 1945 through 1958 and then there's nothing, at least as far
18 as a record, until this offense in 1976, so that's about an
19 18-year gap.

20 I have read your letter about -- you indicated
21 that you lost your beautician's license before in connec-
22 tion with these other criminal matters, and you got it back
23 in the late '60s, and you have tried to build up a business
24 since then. It is really tragic that you got involved in
25 other narcotics dealings, whether they -- whatever extent.

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I think everybody regrets that exceedingly, because the consequences are serious.

I want to revert to one thing that has come up before, and that's the motion to set aside the guilty plea. You appeared before me with Ms. Gerling at an earlier date, and I denied the motion. I see that the postscript to your letter, which is dated --- the letter was received the 13th of July. At the probation office you mentioned your desire of withdrawing your guilty plea. I want to go over that a little again. I think that this arises from a misunderstanding of what is involved in guilt or innocence here.

Everything you have said in your letter indicates you were guilty of the crime that you pleaded to. The fact that you may have been under pressure from this other man or may have succumbed to his persuasions about helping him get money and so forth, that just is not a defense at all.

The reason I am not allowing you to withdraw the guilty plea is that the guilty plea was made, it was made in the recognition of the fact, and it was made without any pressure upon you, coercion, and really, there is no reason to let it stand because it represents the facts.

As far as the punishment, I am aware of the consequences, I am aware that you may lose your license, and I am aware that this may shatter the business you have built

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2 up.

3 At the same time, I have a responsibility as the
4 Judge in this case to enforce the federal criminal laws.

5 The indications to me are that this is a situa-
6 tion which simply demands some meaningful punishment. I am
7 certain that you have been frightened by it, you regret it.
8 I am not at all confident that if there wasn't some punish-
9 ment you wouldn't go back and do the same thing again.

10 So, I think you need, personally, to be deterred
11 from further narcotics dealings, from these pills. I also
12 think that the people who, in your community, so to speak,
13 need to be deterred also. I think if you walked out of this
14 courtroom without any meaningful punishment it would just
15 signal the people who know about it that this is a laughing
16 matter, and I can't do that.

17 At the same time I can hardly send you to any
18 lengthy sentence. So, putting all that together, the best
19 way I can, I sentence you to a year in prison and followed by
20 a special parole term of two years. From many viewpoints
21 that is a very modest sentence, maybe too modest. From your
22 viewpoint, I'm sure it is harsh, but at least I think that
23 there has to be a prison sentence, a prison sentence to
24 signal to you and other people who know about this that there
25 is punishment at the end of the line for selling narcotics;

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2 whether it is LSD, heroin or what, you had LSD and other
3 similar substances.

4 I want to say to you that if you had a real
5 record prior -- at least a recent record of other narcotics
6 convictions, the sentence would be much higher and if, after
7 this probation is over with, if you do indeed feel foolish
8 enough to deal in narcotics or selling narcotics for whatever
9 reason, and you are apprehended, I don't think there is any
10 judge who is going to give a sentence of merely a year. I
11 think that it is going to be substantially greater.

12 So, the best thing for you to do is to get through
13 this and never go back to that again because it will just be
14 more and more prison terms if you do.

15 So, the sentence as I stated, one year in prison
16 and followed by a special parole term of two years.

17 There are certain other counts.

18 MS. PARVER: Yes, your Honor, I believe Counts 1
19 and 2 are still open.

20 THE COURT: Counts 1 and 2 are dismissed.

21 MS. GERLING: Judge, would your Honor defer the
22 sentence and give the defendant some chance to get his
23 business together?

24 THE COURT: Yes, I certainly will. What do you
25 suggest?

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2 MS. GERLING: I would like two months. He has
3 to get somebody to take care of the beauty parlor and the
4 building. He has two corporations.

5 THE COURT: I think that's a little long. I would
6 adjourn the surrender date for some period of time.

7 Does the government have any views on this?

8 MS. PARVER: The government would suggest, your
9 Honor, that one to two weeks at maximum --

10 THE COURT: Two weeks.

11 MS. GERLING: Judge, he has a building and a
12 beauty parlor business to do something with, and in one or
13 two weeks he could never do it, Judge. This is a going
14 business for years.

15 MS. PARVER: Your Honor --

16 THE COURT: Set the surrender for August 12th at
17 10:30. That's three weeks. We cannot have any real lengthy
18 period.

19 MS. PARVER: Your Honor, I have just been reminded
20 by the court clerk that the original indictment is still
21 open. I gather this is a superseding indictment.

22 THE COURT: Yes. Do you move to -- do you have a
23 motion as to the original indictment?

24 MS. PARVER: Yes, your Honor, we would request that
25 an order of nolle prosequi be entered.

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THE COURT: Motion is granted.

That's 70 -- what is the number on that?

77 Cr. 0040, the original indictment. The
motion is granted.

MS. PARVER: Your Honor, I gather that bail --

THE COURT: The same bail will be continued.

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SACHS b&app

STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 21 day of Oct. 1977 deponent served the within *Appendix* upon

U.S. Atty. So. Dist. of N.Y.

attorney(s) for
Appellee

In this action, at
1 St. Andrews Pl., NYC

the address(es) designated by said attorney(s) for that purpose by depositing
— copies of same enclosed in a postpaid properly addressed wrapper, in an
official depository under the exclusive care and custody of the United States
post office department within the State of New York.

Robert Bailey
ROBERT BAILEY

Sworn to before me, this 21 day
of Oct. , 1977

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978

BEST COPY AVAILABLE

